



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार, ११ मून, १९९७/२१ म्येष्ठ, १९१९

हिमाचल प्रदेश सरकार

DISTRICT COURT SHIMLA

NOTIFICATION

Shimla-1, 27th May, 1997

No. DSJ/SML/8 (48)-97.—In exercise of the powers conferred by section 77 of the Mental Health Act, 1987 (Act No. 14 of 1987) the District Court Shimla, hereby makes the following Regulations, namely:—

1. *Short title and commencement.*—(i) These Regulations may be called the Judicial Inquisition for the custody of the person and management of the property of alleged mentally ill person, possessing property (Shimla District Court) Regulations, 1997.

(ii) They shall come into force at once.

2. Definition.—In these Regulations, unless there is anything inconsistent in the subject or context:

- (a) 'The Act' means the Mental Health Act, 1987;
- (b) 'Appendix' means appendix to these Regulations ;
- (c) 'Application' means application for holding an inquisition into the mental condition of alleged mentally ill person;
- (d) 'Assessor' means a person whose name figures in the panel of assessors maintained by the District Court;
- (e) 'Code' means Code of Civil Procedure, 1908;
- (f) 'Court' means District Court Shimla;
- (g) 'Form' means a form set out in the Appendix;
- (h) Other expressions used but not defined herein shall have the meanings respectively assigned to them in the Act ;

3. Application and its contents.—(i) The application may be submitted on a plain paper, but it shall be signed and verified by the applicant ;

(ii) It shall contain the following particulars besides other information, which the applicant may consider material and relevant :

- (a) The name, permanent address and the address for correspondence of the applicant;
- (b) The name, parentage, age, sex, address and other material particulars for the description of the alleged mentally ill person ;
- (c) The name, parentage and present addresses of the relatives of the alleged mentally ill person ;
- (d) If the alleged mentally ill person is in the custody of a person his/her name, parentage and present address ;
- (e) The name, parentage and present addressess of other persons, who ought to have the notice of the judicial inquisition ;
- (f) Nature and description of moveable as well as immoveable property, including interest in any moveable or immoveable property, of the alleged mentally ill person;
- (g) The names, description and place of residence of the dependents , if any, of the alleged mentally ill person ;

(iii) Every application moved under section 50 of the Act shall be entered in the register, to be maintained by the court, on the format prescribed in the appendix.

4. Form and mode of service of notice.—(i) Notice in form 'A' alongwith a copy of the application shall be served, by personal service, upon the alleged mentally ill person;

(ii) Notice in form 'B', alongwith a copy of the application, shall be served, by personal service, upon the person having the custody of alleged mentally ill person ;

(iii) Notice upon the applicant shall be served in Form-C,

(iv) Notice upon the relatives of the alleged mentally ill person and other persons who, in the opinion of the court ought to have the notice of the judicial inquisition shall be served in Form-D, in any of the modes specified in the Code. Copy of the application shall accompany such a notice.

Explanation: Where copies of the application are not supplied by the applicant, the court may get prepared requisite number of copies from its own copying Agency.

5. Examination of the alleged mentally ill person.—(i) When the alleged mentally ill person appears or is produced in the court, the court shall proceed to immediately examine him and if the court finds it difficult on account of the behaviour of the alleged mentally ill person or on account of lack of knowledge of Medical science to examine such person, it may take the help of the Assessors, at least one of whom shall be a Psychiatrist. Examination shall be recorded in question answer form.

(ii) The court may during the course of inquisition proceedings get the alleged mentally ill person examined from a Board of Psychiatrists, to be constituted by the Chief Medical Officer, Shimla or the Medical Superintendent, Indira Gandhi Hospital, Shimla, on the motion of the court.

(iii) If the alleged mentally ill person is a woman, who according to the custom of the area, she resides in, or the custom of the religion, she belongs to, cannot be required to appear in public and for this reason her examination is required on commission, as per provision of section 50(2) of the Act, a female Local Commissioner shall be appointed for her examination as far as possible, and for the assistance of such Local Commissioner two or more Assessors may be appointed, at least one of whom shall be a Psychiatrist.

6. Appointment of Assessors: Assessors may be appointed from amongst :

- (a) the Lawyers, with atleast ten years standing at the Bar, in consultation with the President, Bar Association, Shimla;
- (b) the doctors, who have done specialisation in Psychiatry, in consultation with the the Chief Medical Officer, Shimla, or Medical Superintendent, Indira Gandhi Hospital, Shimla; and
- (c) the educationists, especially those who hold higher educational qualifications and experience in Psychology or Sociology.

7. Evidence of witnesses.—(i) Evidence of witnesses may be given on affidavits, but the other side shall have the right to cross-examine such witnesses;

(ii) Notwithstanding the aforesaid provision, the court may refuse to admit the affidavit of any witness in evidence and may direct the party relying upon such affidavit to produce such witness for being examined in the court.

8. Appointment of Guardian adlitem of alleged mentally ill person.—If the court finds that *prima facie* the alleged mentally ill person is mentally ill, it will appoint a proper person to be his or her guardian for the purpose of inquisition, in accordance with the provisions of order 32 Rule 3 of the Code.

9. Speedy conduct of Inquisition.—After the appearance/production of the alleged mentally ill person, the court shall proceed with the inquisition from day to day, unless, for reasons to be recorded in writing, it is not possible to do so, and conclude the inquisition and record findings within one month of the appearance/ production of such person.

10. Appointment of guardian of a person and Manager of the property of mentally ill person.—(i) While appointing a guardian of the person or the Manager of the property of mentally ill person, it shall be ensured that the appointee is a person, who can take care of the interests of the mentally ill person and his dependents, in the best possible manner ;

(ii) A person who;—

(a) is a minor;

- (b) is insane ;
- (c) is insolvent ;
- (d) has been accused of an offence, against the person or the property of the mentally ill person, irrespective of the fact whether the accusation has resulted in acquittal or conviction;
- (e) has or is likely to have interest adverse to that of the mentally ill person, qua his property or any item or part thereof, shall not be appointed as the guardian of the mentally ill person or Manager of the property of the mentally ill person, or both.

(iii) No person shall be appointed as guardian of the mentally ill person or Manager of his property, in his individual capacity, except with his consent; in writing;

(iv) A formal order of appointment of the guardian of the person or the Manager of the property, or both, shall be drawn up and delivered to the appointee, alongwith a list of his duties responsibilities and powers, as enumerated in sections 58 and 59 of the Act.

11. Maintenance of register of assets and liabilities of the mentally ill persons.—(i) Where the manager of the property of the mentally ill person has been appointed by the court and such Manager furnishes the inventory and annual accounts in accordance with section 60 of the Act, the Nazir of the court shall, on the basis of such inventory and accounts, enter the details of the immoveable as well as moveable property and other assets, as also the debts and liabilities of the mentally ill person, in a register, in the form of a Ledger Accounts, showing the properties, assets and the claims due to the mentally ill person on one side and the debts and the liabilities due by him on the other ;

(ii) Such entries would be revised, from time to time, on the basis of periodical statements of accounts submitted by the Manager and the transactions regarding disposal of the property of the mentally ill person and the acquisition of the property for and on his behalf.

12. Directions for performance of contracts entered into by the mentally ill person before such illness.—(i) Before issuing a direction to the Manager, for the performance of a contract for the disposal of the property, entered into by the mentally ill person, before his mental illness, under section 62 of the Act, the court shall summarily inquire into the genuineness of the contract ;

(ii) Evidence in the course of such inquiry may be taken on affidavits.

13. Disposal of lease of the mentally ill person.—Where a Manager applies for disposal of a lease or underlease of a mentally ill person under section 64 of the Act, the court shall hold a summary inquiry to satisfy itself that the disposal of the lease or underlease would be for the benefit of the mentally ill person. The evidence in the course of such an inquiry may be taken on affidavits.

14. Inquiry where accuracy of inventory or accounts is impugned.—Where the accuracy of an inventory or accounts submitted by the Manager under sub-section (1) or sub-section (2) of Section 60 of the Act is challenged by a petition under Section 66 of the Act, the inquiry into the matter, shall be marked to the Senior Subordinate Judge, Shimla, in case the Manager is appointed by the District Court and to the District Collector, Shimla, where the Manager is appointed by the Collector.

15. Application for leave to sue for accounts.—The District Court shall not allow a relative of a mentally ill person to sue for accounts from any Manager of the property of mentally ill person, unless such relative makes an application supported by an affidavit and the court after holding a summary inquiry, is satisfied that the Manager is *prima-facie* guilty of breach of trust.

16. *Maintenance of accounts of receipts and disbursement by the person appointed under Section 71.*—(i) Where the District Court, instead of appointing a Manager of the property of the mentally ill person, appoints a person to realise the money and/or the produce of any property due to the mentally ill person and authorises such person to apply the money and/or produce, received by him, for the maintenance of mentally ill person and/or the members of his family, in accordance with the provision of section 71, such person shall maintain accounts of the cash and produce so received/realised by him and their utilisation for the maintenance of the mentally ill person, or his family members. Initial statement of such accounts shall be filed in the court within three months of the appointment of such person and thereafter statements of accounts shall be filed after every two months ;

(ii) Nazir of the court shall make entries in the register referred to in Para-11 of these Regulations, on the basis of the statements filed by such person, in the manner laid down in the aforesaid para, showing receipts on one side and disbursements on the other.

Sd/-

District Judge, Shimla.

APPENDIX

Formate of Register

[See para 3(iii) of the Regulations]

Date of institution	Name, parentage and address of the applicant	Name, parentage, age, sex, address and other particulars, if any, of the alleged mentally ill person	Date of final decision	Result of Judicial inquisition, i.e. whether the alleged mentally ill person has been found to be mentally ill, or not	If the alleged mentally ill person has been found to be in fact mentally ill, what is the finding with respect to his capacity to take care of himself and to manage his property
1	2	3	4	5	6

If he is incapable to take care of himself, who has been appointed guardian of his person or what order has been passed for appointment of guardian of his person	If he has been found incapable of managing his property, who has been appointed Manager of his property or what order has been passed for appointment of Manager of his property	Date of consignment of record and Goshwara No.	Result of appeal/re-vision, if field	If the mental illness ceases, the date of passing the order of setting aside all the actions under the Act	Remarks
7	8	9	10	11	12

FORM-A

[See para 4(i) of the Regulations]

In the District Court (Court of District Judge), Shimla.

Application No.....of 199 .

Application for holding judicial inquisition into the mental condition of
 Shri.....s/o.....
 aged.....years r/o.....

To
 Shri.....s/o.....
 aged.....years r/o.....

WHEREAS an application U/s 50 of the Mental Health Act for holding judicial inquisition into your mental condition has been filed by..... (copy of the application enclosed).

You are hereby directed to attend, in person this court on.....at
(time) at.....(place) for being
 examined by the court.

OR

You are hereby directed to appear in person on.....
 at.....(time) at.....(place) before.....
(the authority or person from whom the
 court has called for report concerning the mentally ill person) for being examined by such
 authority/person.

Given under my hand and the seal of the Court this.....day of.....
 199 .

Sd/-

District Judge.

FORM-B

[See para 4 (ii) of the Regulations]

In the District Court (Court of District Judge), Shimla

Application No.....of 199 .
 Application for holding Judicial inquisition into the mental condition of Shri
s/o.....
 aged.....year r/o.....

To
 Shri.....s/o.....
 aged.....year R/O.....

WHEREAS an application U/s 50 of the Mental Health Act has been moved, for holding judicial inquisition into the mental condition of Sh.....
s/o..... R/O.....
..... who is presently in your custody by.....

You are hereby directed to produce the said Shri.....
alleged mentally ill person, in this court on..... at.....
(time) at..... (place) for being examined by the court :

OR

You are hereby directed to produce the said Sh.....
alleged mentally ill person before..... (the
authority or person from whom the court has called for report concerning the mentally ill person)
for being examined by such authority/ person.

Copy of the application moved by above named Sh.....
is enclosed.

Given under my hand and the seal of Court this..... day
of....., 199

Sd/-

District Judge.

FORM-C

[See para 4(iii) of the Regulations]

In the District Court of District Judge, Shimla.

Application No..... of 199
Application under Section 50 of the Mental Health Act, 1987 for holding judicial
inquisition into the mental condition of Sh..... s/o.....
aged..... years r/o.....

To

Shri..... s/o.....
aged..... years r/o.....

Take notice that on your application under section 50 of the Mental Health Act, 1987,
Sh..... s/o.....
r/o.....
alleged mentally ill person, has been directed to appear/to be produced *in this court on.....
..... at..... at.....
....., for being examined by the court.

OR

Take notice that on your application under Section 50 of the Mental Health Act, 1987,
Sh..... s/o.....
r/o....., alleged mentally ill person, has
been directed to appear/ to be produced before..... on
..... at.....
..... for being examined.

Given under my hand and the seal of this court this.....day
of....., 199

Sd/-

District Judge.

*Strike out which is not applicable.

FORM-D

[See para 4(iv) of the Regulations]

In the District Court of District Judge, Shimla

Application No.....of 199

Application U/s 50 of the Mental Health Act, 1987 for holding judicial inquisition
into the mental condition of Sh.....s/o.....
.....aged.....years r/o.....

To

Sh.....s/o.....
aged.....years r/o.....

Whereas an application U/s 50 of the Mental Health Act has been moved by Sh.....
.....for holding a judicial inquisition into the mental condition of Sh.....
s/o.....r/o.....,
alleged mentally ill person;

AND WHEREAS this court has ordered the appearance/production* of the said alleged
mentally ill person in this court/before.....
(the person from whom the court has called for the report concerning the mentally ill person)
on.....at.....
at.....;

AND WHEREAS the court is of the opinion that you, being a relative/friend* of the said
alleged mentally ill person, ought to have the notice of the judicial inquisition, being held by this
court;

You are hereby informed that if you have anything to say in the matter, you may do so, by
filing a written statement on or before the aforesaid date and may also attend the proceedings.

Copy of the application U/s 50 of the Mental Health Act is enclosed.

Given under my hand and seal of the Court this.....day
of....., 1997.

District Judge, Shimla.

*Strike out which is inapplicable.